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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In re

1 MIN, LLC; HOTEL AT SOUTHPORT,
LLC; and TWELFTH FLOOR, LLC,

Debtors.

Chapter 11

Lead Case No. 24-01519

(Jointly Administered)

**LIMITED OBJECTION TO
JOINT PLAN & DISCLOSURE
STATEMENT & RESERVATION
OF RIGHTS**

Plaintiffs Lan Cai, Shujie Chen, Tianran Chen, Weijun Chen, Jie Chu, Zhaojun
Cong, He Cui, Jianying Ding, Jichun Du, Qing Du, Jieying Feng, Yupeng Gao, Yiran
Han, Jinyang Hu, Naixin Hu, Xiao Huang, Junmei Jin, Xin Meng, Weihong Lu,
Yuanyuan Ma, Min Pan, Lei Pei, Hao Qi, Xiao Rong, Juan Shao, Hui Wang, Jingyi
Wang, Yuquan Wang, Zidong Wang, Rongrong Wu, Zhaohui Xu, Qi Xu, Jie Yan, Ke

EB-5 PLAINTIFFS' LIMITED OBJECTION TO JOINT PLAN
AND DISCLOSURE STATEMENT & RESERVATION OF
RIGHTS

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1 Yang, Qin Yang, Hongyun Yu, Shuxian Zeng, Xiaohong Zhang, Ying Zhao, Minbo
2 Zhou, Nan Zhou, Huiqing Zhu, Ziling Zeng, Luyi Zhang, Jundi Liang, Tao Li, Yun
3 Cai, Hongliang Tang, Jie Tang, Wenlung Chen, Shi Zhang, Jun Che, Dahe Zhang, Shan
4 Wan, Xiaohong Sun, Yan Lyu a/k/a Yan Lu, Wenyan Wang, Jialin Tian, and Rui Tang,
5 (collectively, the “EB-5 Plaintiffs”), plaintiffs in Case No. 24-2-04850-2 filed prior to
6 the Petition Date in the Superior Court of the State of Washington, King County against
7 each of the Debtors in the above-captioned cases, hereby file this Limited Objection to
8 the Joint Plan and Disclosure Statement & Reservation of Rights (the “Limited
9 Objection”) for the express purposes of ensuring adequate reserves are established
10 under the Debtors’ proposed Joint Plan of Reorganization (the “Plan”) [ECF No. 9]. At
11 the time of the filing of this Limited Objection, and assuming no substantive changes
12 are made to the proposed Plan, the EB-5 Plaintiffs are not objecting to the terms of the
13 proposed sale as set forth in the Plan, including the proposed sale price and timeline.
14 However, the EB-5 Plaintiffs have valuable claims against each Debtor that are
15 unlikely to be liquidated prior to the proposed sale closing and therefore require
16 adequate protection of their claims via the establishment of sufficient reserves at all
17 three Debtors to satisfy any ultimately Allowed Claims held by the EB-5 Plaintiffs
18 against the Debtors. Without these sufficiently funded disputed claim reserves, the
19 proposed Plan is unconfirmable as it would unfairly discriminate against the EB-5
20 Plaintiffs and violate Bankruptcy Code §1129(b)(1).

21 I. FACTUAL BACKGROUND & EB-5 LITIGATION

22 EB-5 Plaintiffs are fifty-nine (59) foreign investors who invested \$500,000 to
23 become limited partners in Southport Hotel EB-5 LP (the “EB-5 Partnership”) and seek

1 legal immigration status through this investment and the U.S. Government's EB-5
2 investor immigration program. The EB-5 Partnership ultimately made a loan to Debtor
3 Hotel at Southport, LLC, which was allegedly used for constructing the Hyatt Regency
4 Hotel (the "Hotel") in Renton, Washington, which, along with the land underlying the
5 Hotel, is the primary asset of the Hotel Debtor entity.

6 At the request of the Court, a copy of the Second Amended Complaint (the
7 "Amended Complaint") was filed on the Court docket at ECF No. 48-1. While EB-5
8 Plaintiffs need not fully detail the causes of actions and legal bases underlying EB-5
9 Plaintiffs' claims as set forth in the Amended Complaint, for purposes of this Limited
10 Objection, the critical elements of the Amended Complaint are as follows:

- 11 • EB-5 Plaintiffs assert claims against all three Debtors and additional non-debtor
12 defendants, including Mr. Michael Christ in his personal capacity as the ultimate
13 equity owner of the Debtors. Am. Compl. ¶¶12-20.
- 14 • EB-5 Plaintiffs assert that such claims are *joint and several* as against all
15 defendants, including each Debtor in these cases. Am. Compl., p. 2.
- 16 • EB-5 Plaintiffs assert damages of no less than \$32.45 million on a joint and
17 several basis against each defendant. *Id.*; and
- 18 • As of the filing date of these Chapter 11 cases, the EB-5 Litigation was in its
19 preliminary stages, with no substantive discovery or dispositive motions filed to
20 date.

21 Given these facts, EB-5 Plaintiffs have potential claims against each Debtor in excess
22 of \$32 million. Due to the imposition of the Bankruptcy Code §362 automatic stay and
23 the unliquidated nature of these claims, there is effectively no scenario in which these



1 claims will be litigated to judgment or settled prior to the Effective Date of the
2 proposed Plan. As a result, EB-5 Plaintiffs assert that, absent allowance, disallowance
3 or estimation of such claims pursuant to Bankruptcy Code section 502(c), the Plan must
4 reserve the claims in the full asserted amount of such claims.

5 Notwithstanding the Limited Objection regarding the establishment of sufficient
6 reserves to protect the EB-5 Plaintiff Claims, the EB-5 Plaintiffs are approaching these
7 cases in good faith and do not currently object to the substance of the proposed sale as
8 memorialized in the proposed Plan, including the identity of the Purchaser or the Sale
9 Price. While the proposed timeline for the sale may conflict with the allowance,
10 disallowance or estimation for reserve purposes of the EB-5 Plaintiff Claims, the EB-5
11 Plaintiffs believe that with good faith efforts by all interested parties to address the fair
12 valuation and allowance of the EB-5 Plaintiff Claims, the proposed sale timeline will
13 not need to be adjourned or otherwise delayed.

14 II. LIMITED OBJECTION

15 The EB-5 Plaintiffs' limited objection is a straightforward and narrow one: the
16 EB-5 Plaintiffs, as creditors of each of the Debtors with disputed, unliquidated and
17 contingent claims, require that the Disputed General Unsecured Claims Reserve set
18 forth in **Article V.G.3** of the Plan is adequately funded as of the Effective Date of the
19 Plan with a reserve amount sufficient to satisfy any EB-5 Plaintiff Claims ultimately
20 allowed against the three Debtors.¹ The current proposed Plan has no actual

21
22 ¹ While at the time of the filing of this Limited Objection the EB-5 Plaintiffs submit that the full
23 amount of the damages asserted in the EB-5 Complaint (\$32.45 million) should be reserved at the Hotel Debtor
entity, the EB-5 Plaintiffs are in settlement discussions with the Debtors and are potentially amenable to an
agreed reserve amount that would protect the EB-5 Plaintiffs' right to receive distributions for any Allowed
Claims against each Debtor, but still permit the proposed sale to proceed on the current proposed sale timeline

1 protections for holders of disputed claims such as the EB Plaintiffs, but instead simply
2 requires the Debtors to provide a reserve amount for each category of reserves based on
3 the Debtors' own "reasonable estimate" of the amount of each such disputed claim:

4 (h) in connection with establishing a reserve for the payment of any
5 such Disputed Claim that may be subsequently Allowed (the "Disputed
6 General Unsecured Claims Reserve"), a schedule, broken down by Debtor,
7 of all General Unsecured Claims in Class 4 that are (or are expected to be)
8 Disputed and *a reasonable estimate of the amount of each such Claim*,
(when finalized, the "Disputed General Unsecured Claims Reserve
Projection");

9 Plan, Article V.G.3(h) (*emphasis added*)

10 Debtors have already filed an objection to the EB-5 Plaintiff Claims [ECF No. 89] (the
11 "EB-5 Plaintiff Claim Objection") and therefore EB-5 Plaintiffs will reasonably assume
12 that Debtors' "reasonable" estimate of the EB-5 Plaintiff Claims for purposes of
13 establishing and funding the Disputed General Unsecured Claims Reserve in
14 accordance with Article V.G.3(h) of the Plan will be \$0 or a *de minimis* reserve
15 amount.

16 While EB-5 Plaintiffs do not believe that Debtors or other interested parties will
17 take the position that disputed claim reserves in general are inappropriate in Chapter 11
18 cases, given the current proposed Plan includes multiple disputed claim reserves, EB-5
19 Plaintiffs note that it is a well-settled principle of bankruptcy law that disputed claim
20 reserves must be adequately funded with "sufficient assets to pay disputed claims" and
21 that to discriminate against creditors solely because they hold disputed claims

22 _____
23 and potentially avoid impairment of other creditors of the Hotel Debtor and Mezz Debtor. *See* EB-5 Compl., p.
20. [ECF No. 48-1].



1 constitutes unfair discrimination for purposes of Bankruptcy Code §1129(b)(1). *See,*
2 *e.g., In re Motors Liquidation Co.*, 447 B.R. 198 (Bankr. S.D.N.Y. 2011) (“Of course
3 it’s true, as the Nova Scotia Noteholders observe, that courts in this and other
4 jurisdictions have required debtors to establish reserves with assets sufficient to pay
5 disputed claims in full to allow creditors full pro rata recovery on their claims.”); *In Re*
6 *ARN LTD. Ltd. P’ship*, 140 B.R. 5, 13 (Bankr. D.D.C. 1992) (holding that fact that
7 large disputed claims are disputed “is not justification for discriminatory treatment”); *In*
8 *re Chemtura Corp.*, 448 B.R. 635, 651 (Bankr. S.D.N.Y. 2011) (establishing reserve
9 funds for disputed claims and requiring significant funding of such reserves of at least
10 20% higher than debtors’ highest estimates of liability). One common solution to this
11 problem is Bankruptcy Code §502(c) estimation of claims. 11 U.S.C. §502(c).

12 Here, for purposes of Plan confirmation, EB-5 Plaintiffs are *not* asking that the
13 Court fully allow their claims against each Debtor in the full \$32.45 million amount
14 asserted in the Amended Complaint, but instead simply requesting that either (i) the
15 Court require modification of the Plan provisions permitting the Debtors to unilaterally
16 establish the amount of the various disputed claim reserves based on the Debtors’ own
17 views of what “reasonable” reserve amounts are or (ii) the Court require that the EB-5
18 Plaintiff Claims be allowed, disallowed, or estimated for distribution purposes under
19 Bankruptcy Code Section 502(c) prior to any distributions being made under the Plan
20 that would likely prejudice the recoverable amount for any claims ultimately allowed
21 against the Debtors on account of the EB-5 Plaintiff Claims.



III. PROPOSED PLAN MODIFICATION & RESOLUTION OF LIMITED OBJECTION

While EB-5 Plaintiffs are willing to negotiate in good faith on an estimated or allowed claim amount at each debtor on account of the EB-5 Plaintiff Claims, they are not willing at this time to accept on faith that the Debtors will not move forward with the sale process without properly reserving for the EB-5 Plaintiff Claims. As such, for purposes of Plan Confirmation, the EB-5 Plaintiffs submit that the Plan and Confirmation Order should be revised to specifically ensure that the Disputed General Unsecured Creditors Reserve mechanism set forth in Article V of the Plan is not the means by which the EB-5 Plaintiff Claims are effectively rendered valueless before they can be properly adjudicated. EB-5 Plaintiffs have shared proposed Plan and Confirmation Order revisions with counsel to the Debtors and are hopeful that the Debtors can make these slight modifications to the proposed Plan to potentially resolve this Limited Objection prior to the Confirmation Hearing.

As a practical matter, EB-5 Plaintiffs believe there are three reasonable routes to resolve this Limited Objection without unduly delaying the proposed Plan confirmation and sale process:

- 1) The Debtors and EB-5 Plaintiffs can agree on appropriate Disputed General Unsecured Claim reserve amounts (or Allowed Claim amounts) at each debtor that would ensure appropriate potential recovery for EB-5 Plaintiff Claims if allowed, which would eliminate any concern from the EB-5 Plaintiffs concerning distributions that may otherwise render the EB-5 Plaintiff claims valueless;

- 1 2) The Court can estimate the EB-5 Plaintiff Claims against each Debtor
2 pursuant to Bankruptcy Code §502(c) for purposes of distribution prior to the
3 Effective Date of the Plan and such estimated claim amounts will constitute
4 the exact reserve amount that the Debtors must reserve on account of the EB-
5 5 Plaintiff Claims, if any; or
6 3) The EB-5 Plaintiff Claims can be allowed or disallowed by final order of the
7 Court prior to the Effective Date of the Plan, thereby resolving the issue prior
8 to any distributions being made under the proposed Plan.

9 Finally, EB-5 Plaintiffs note that debtors' counsel has been constructively
10 working with counsel to the EB-5 Plaintiffs to negotiate a potential consensual
11 resolution to this Limited Objection. Subject to Federal Rules of Evidence §408, the
12 parties have exchanged revisions to the proposed Plan and Confirmation Order that the
13 parties expect may lead to a consensual confirmation hearing, subject to final sign-off
14 from EB-5 Plaintiffs and the Debtors on any additional changes to the Plan and
15 Confirmation Order. Should the parties reach a consensual resolution prior to the
16 Confirmation Hearing, counsel will inform the Court that this Limited Objection has
17 been resolved for purposes of plan confirmation

18 **IV. RESERVATION OF RIGHTS**

19 The EB-5 Plaintiffs reserve all rights with respect to any further Plan, Disclosure
20 Statement or Confirmation Order, including the right to amend or supplement this
21 Limited Objection in response to any proposed changes to the Plan, Disclosure
22 Statement or Confirmation Order made by Debtors prior to or at the Confirmation
23 Hearing.



1 **V. CONCLUSION**

2 For the foregoing reasons, EB-5 Plaintiffs respectfully request that the Court
3 require that the Debtors modify the proposed Plan and Confirmation Order to establish
4 sufficient reserves with adequate assets to satisfy any ultimately Allowed Claims held
5 by the EB-5 Plaintiffs.

6
7 Dated this 31st day of October, 2024.

8 **REID & WISE LLC**

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